

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

Claims 1-5, 7-9 and 12-42 are pending in this application. Claim 1 is amended without prejudice. No new matter is added.

The amendments and the remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents. Support for the amended recitations in the claims and for the new claims are found throughout the specification and from the pending claims. More specifically, support for the amended recitation in claim 1 is found in the instant specification on page 14, lines 9-19.

Claims 1, 2, 4, 5, 7-9, 12-16 and 25-34 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by EP 0 619 073 to Lundstedt et al.; claims 1, 2, 4, 5, 7-9, 12-16 and 25-34 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by WO 90/08468 to Scher et al.; and claims 3, 20 and 35-42 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Scher. The rejections will be collectively addressed and are respectfully traversed. Neither Lundstedt nor Scher teach, enable, suggest or motivate a skilled artisan to practice the instantly claimed invention.

Applicants' invention is directed to a method for suppressing the antagonistic interactions between at least two different agrochemically active compounds in an agrochemical combination, comprising at least partially surrounding at least one of the agrochemically active compounds with a carrier material. One of the agrochemically active compounds is a safener. Lundstedt and Scher are not on point.

The Examiner is respectfully reminded that a two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). A reference contains an enabling disclosure if a person of ordinary skill in the art could have combined the description of the invention in the prior art reference with his own knowledge of the art to have placed himself in possession of the invention. *See In re Donohue*, 226, U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Turning to obviousness, the Federal Circuit is quite clear that there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993): And, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, **both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure.** *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

Against this background, the anticipation and obviousness rejections must fall. Lundstedt relates to the pourability of pesticide-containing solid microcapsules suspended in a water-based carrier, purportedly enhanced by a solubilized potassium polyphosphate salt. Scher, in turn, relates to microcapsule formulations combined with emulsions or particle dispersions in a single-package formulation, wherein the formulation is a dispersion having two dispersed phases. Neither document, however, teaches, enables, suggests or motivates a skilled artisan to practice

the instantly claimed invention wherein one of the agrochemically active compounds is a safener. Moreover, Scher does not even disclose the suppression of antagonistic interactions.

Scher, indeed, lacks any suggestion or motivation that would lead a skilled artisan to modify the reference's teachings in order to practice the instantly claimed invention. It is well-settled that "obvious to try" is not the standard upon which an obviousness rejection should be based. *See In re Fine*. And as "obvious to try" would be the only standard that would lend the Section 103 rejection any viability, the rejection must fail as a matter of law. Therefore, applying the law to the instant facts, the rejection is fatally defective and should be removed.

Consequently, reconsideration and withdrawal of the Section 102 and 103 rejections are believed to be in order and such actions are respectfully requested.


CONCLUSION

In view of the remarks and amendments herewith, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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